IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 92 of 2006
To
SPECIAL CRIMINAL APPLICATION No. 98 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMBALAL CHITTABHAI PATEL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DHAVAL G NANAVATI for Applicant(s) : 1 - 2.
MR PURVISH J MALKAN for Respondent(s) : 1,
None for Respondent(s) : 2,
MR HARIN P RAVAL for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/07/2007

ORAL JUDGMENT

At the outset, Shri Nanavati, learned advocate appearing on behalf of the respective petitioners

seeks permission to delete petitioner No.2 from each of the petitions. Permission is accordingly granted. Under the circumstances, the present petitions are required to be considered qua petitioner No.1 in each of the petitions.

2. Special Criminal Application No.92/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.139/05.

Special Criminal Application No.93/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.138/05.

Special Criminal Application No.94/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.136/05.

Special Criminal Application No.95/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.142/05.

Special Criminal Application No.96/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.141/05.

Special Criminal Application No.97/06 is filed by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.140/05.

Special Criminal Application No.98/06 is filed

by the petitioners to quash and set aside the order passed by the learned trial Court issuing summons in criminal case No.137/05.

3. All the aforesaid criminal cases/complaints are filed by the Registrar of Companies before the ld. Addl. Chief Metropolitan Magistrate, Ahmedabad for the offence u/s 220 of the Companies Act, 1956 for not filing three copies of balance sheet and the profit and loss account with the Registrar of Companies. On the said complaint, the ld. Addl. Chief Metropolitan Magistrate, Ahmedabad has issued summons against the petitioner also. The petitioner who was working with the Gujarat Industrial Investment Corporation Ltd. was nominated as Director and even subsequently the said company was taken over by the respondent No.2. It is the case of the petitioner that he has been withdrawn as a nominated Director since 1999-2001-2002 i.e. much prior to filing of the complaints. Shri Nanavati has relied upon section 41/A of the State Financial Corporation Act, 1951 and has submitted that the impugned complaints against the petitioner as a nominated Director is required to be quashed and set aside. It is submitted that even otherwise, on merits also, when the petitioner was withdrawn as a nominated Director much prior to filing of the complaints/criminal cases, the orders passed by the learned trial Court issuing summons against the petitioner in the aforesaid criminal cases requires to be quashed and set aside.

4. Shri KT Dave, ld. Addl. Central Government Standing Counsel appearing on behalf of the Registrar of Companies, - original complainant is not in a position to dispute that the respective applicants were withdrawn as nominated Directors much prior to filing of the criminal complaints and even prior to the commission of the offence. He is also not in a position to dispute that even, otherwise, the applicants were the nominated Directors.

5. Considering the above, when the applicant was the nominated Director and even, otherwise on merits also, when the applicant was withdrawn as nominated Director much prior to the commission of the offence and/or filing of the criminal complaints, the summons issued by the Court of ld. Addl. Chief Metropolitan Magistrate, Ahmedabad in aforesaid criminal cases for the offence u/s 220 of the Companies Act are required to be quashed and set aside so far as the petitioner is concerned.

6. For the reasons stated above, all the petitions succeed. The impugned orders passed by the ld. Addl. Chief Metropolitan Magistrate, Ahmedabad dtd 31-8-2005 issuing in criminal case Nos.136/05 to 142/05 are hereby quashed and set aside so far as the petitioner is concerned. Rule made absolute in each petitions.

(M.R. Shah, J.)

shekhar/-